

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT, LIVE OAK SCHOOL
DISTRICT, AND CYPRESS CHARTER
SCHOOL.

OAH CASE NO. 2010120551

ORDER DENYING MOTION TO
QUASH SUBPOENAS

On December 16, 2010, Parent on behalf of Student filed a request for a due process hearing (complaint) naming Fairfield-Suisun Unified School District (Fairfield), Live Oak School District (Live Oak) and Cypress Charter School (Cypress).¹ The due process hearing is scheduled to take place on June 20-24, 2011.

On May 12, 2011, Student delivered subpoenas to Live Oak and Cypress's counsel's office for the appearance, at hearing, of the following individuals: Les Forster, Lara Rankin, Catherine Murray, Megan Tresham, Yvonne Albrecht, and Gail Schwartz. On May 17, 2011, Student delivered three more subpoenas for Katie Merchant, Valerie Neer, and Travis Parker. Student delivered the subpoenas to counsels' receptionist.

On May 12, 2011, Student delivered 14 subpoenas to Fairfield's counsel's office for the appearance, at hearing, of the following individuals: Ann Marie Neubert, Wendy Seres, Arlene Caron, Ron Hayward, Blanche Sillen, Matt Guggemos, Lindsey Weller, Carly Perales, Oneta Edmonds, Linda McCarty, Joseph Waddles, Steve Smith, Joanne Acosta, and Anna Johnson.² Student delivered these subpoenas to counsel's receptionist.

On May 19, 2011, Live Oak and Cypress and Fairfield filed separate motions to quash the subpoenas on the basis that the service requirements of California Code of Civil Procedure section 1987 were not complied with and, therefore, the subpoenas are invalid. Live Oak and Cypress do not dispute the subpoenas for Les Forster (Principal of Cypress)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² Counsel for Fairfield and counsel for Live Oak and Cypress are located in the same law firm at the same physical address.

and Katie Merchant (Director of Special Education for Live Oak) and this order will not address those subpoenas. Live Oak and Cypress contend that the subpoenas for Lara Rankin, Catherine Murray, Megan Tresham, Yvonne Albrecht, and Gail Schwartz, Valerie Neer, and Travis Parker are invalid. Fairfield contends that all 14 of the subpoenas it received are invalid.

On May 20, 2011, Student filed separate responses in opposition to respondents' motions to quash. On May 24, 2011, Live Oak and Cypress, and Fairfield, filed separate replies to Student's response in opposition. On May 26, 2011, Student filed supplemental responses to respondents' replies.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subs. (e)(2), (3).) The hearing officer in a special education due process proceeding may issue subpoenas or subpoenas duces tecum upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, the Office of Administrative Hearings (OAH) relies by analogy on the relevant portions of the California Code of Civil Procedure.³ Section 1987.1 of that code provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Respondents raised similar issues in their motions to quash. Specifically, respondents claim that Student failed to personally serve the witnesses and since these witnesses are teachers and staff members, they are not officers, directors, or managing agents of the district, as required by California Code of Civil Procedure section 1987. Therefore, serving subpoenas at the Fairfield's and Live Oak and Cypress's attorneys was improper and the subpoenas are invalid.

OAH has an established history of requiring parties to produce witnesses reasonably within their control at due process hearings, including teachers and other staff members, without the need for a subpoena. As such, the Administrative Law Judges, through their pre-hearing conference orders and other orders, routinely direct the parties to collaborate on witness availability and scheduling. This provides the opportunity for the student to notify

³ Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act found in Government Code sections 11450.05 to 11450.30, do not apply in special education due process proceedings.

the district of the district employees or agents, including teachers and support staff, that students would like to appear at hearing. The districts subsequently make these employees available. The same courtesy is expected of students. Personally serving individual subpoenas for district employees to testify at a due process hearing is unnecessary and an administrative burden inconsistent with the spirit of special education due process hearings.

In this case, Student could have easily collaborated with the respondents by telephone or in writing to arrange for the employees she wanted to testify at hearing without the use of subpoenas. However, that failure is not sufficient to warrant a deviation from standard OAH practice of having parties present witnesses under their control without the need for subpoenas or by requiring personal service of subpoenas.⁴ Neither Fairfield or Live Oak and Cypress have established that they are unable to procure, present or otherwise produce the witnesses requested in Student's subpoenas. Accordingly, the respondents' motions to quash are denied.

ORDER

1. Fairfield's motion to quash the subpoenas is denied.
2. Live Oak and Cypress's motion to quash the subpoenas is denied.

Dated: May 31, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

⁴ Furthermore, if Student was required to personally serve the individual witnesses, Fairfield, Live Oak, and Cypress would have to disclose their employees' personal information, including last known home addresses, in order to provide fair opportunities for personal service.